

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

United States of America

Case No. 1:21-cr-00237-DMT

Plaintiff,

vs.

Defendant's Sentencing
Memorandum

Delmar Wilson,

Defendant.

- ¶ 1. By Defendant, Delmar Wilson, through Counsel, Sand Law, PLLC:
- ¶ 2. Defendant is set for sentencing in this matter on 3/6/2023.
- ¶ 3. Per the Plea Agreement in this matter, the Government will be recommending a 2-level downward adjustment for acceptance of responsibility, provided Defendant has demonstrated a genuine acceptance of responsibility; a 1-level downward adjustment for timely notifying the Government of Defendant's intention to enter a guilty plea; a sentence within the applicable Guideline range; recommend that some or all of the imprisonment imposed for each count run consecutive to one another; recommend 3 years supervised release; and move to dismiss Count Two of the Indictment.
- ¶ 4. Defendant will argue for a sentence of time served (calculated to be 309 days as of 3/1/2023, with 46 days of good time) with whatever term of supervised release the Court deems appropriate.
- ¶ 5. Analysis of 18 USC § 3553 factors to be considered in imposing a sentence:
 - a. Nature and circumstances of the offense and the history and characteristics of the defendant:

- i. Nature and circumstances of the offense – The offense at issue in this case is serious and involves the assault of a federal officer with a dangerous weapon. However, this occurred in the context of Defendant being highly intoxicated. Defendant following this episode maintained a period of sobriety of nearly a year prior to him then being arrested for the instant offense.
 - ii. History of the Defendant – Defendant does have criminal history outside of the present offense.
 - iii. Characteristics of Defendant – Defendant’s family describe him as a kind and generous grandfather, father, brother, friend, and community member. He has a significant support network including his wife, son, and other family members. He has some significant criminal history, but that is by and large pretty old. This is the only significant criminal history in quite a while. It should be noted as well that Defendant does dispute some aspects of the criminal history described in the PSI. He specifically disputes the described conviction for Possession of Firearm.
- b. Need for the sentence imposed to...
- i. Reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense – Defendant has been incarcerated for nearly a year for his role in the crime. Defendant is accepting responsibility for his actions through the Plea Agreement. Defendant is an elderly man with significant and ongoing health problems. This period of incarceration has represented an incredible hardship on him

and has meant him delaying necessary medical care.

- ii. Afford adequate deterrence to criminal conduct – Defendant has spent nearly over a year in custody. The experience has been very unpleasant for him, especially given his medical conditions which remain untreated. The experience will certainly deter him from further criminal conduct.
- iii. Protection of the public from further crimes of Defendant – Defendant’s willingness to accept responsibility, his medical conditions, and his age indicates that society is not at risk of further criminal conduct by Defendant should the Court grant him a time served sentence. Defendant has accepted responsibility through the Plea Agreement. Defendant has multiple health conditions, including but not limited to diabetes which makes him insulin dependent and numb, a broken foot that has not healed properly after surgery, and severe back pain that needs surgical attention. See the attached medical documentation.
- iv. To provide the Defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner – Defendant has been in custody for over a year and needs surgery and other professional medical care. He is able to adequately obtain this care outside of Bureau of Prisons custody.

¶ 6. Other relevant circumstances:

- a. The two main circumstances in the Defense’s mind which argue for a time served sentence are the significant period of time Defendant has already been incarcerated (which is self-explanatory) , and Defendant’s need for significant medical care.

- b. Defendant's medical condition is terrible. It is described in Exhibit 1 here attached.

It consists of peripheral vascular disease; spinal stenosis; low back pain; epigastric pain; coronary artery disease; hypertension; hypercholesterolemia; herpes zoster; chronic back pain; alcohol dependence; Type 2 diabetes; Barrett's esophagus; diverticulosis of colon; and depression. While these diagnoses are of varying seriousness, there are some that are of significant seriousness. And the overall cumulative impact is certainly significant. The seriousness of Defendant's medical condition is also demonstrated by the fact that while he was in government custody he was scheduled for two separate back surgeries that ended up getting canceled due to his not being able to secure a furlough.

- c. It should also be noted that Defendant tried to obtain treatment services while incarcerated. However, he was not able to obtain these services. The reason he was not able to obtain these services is because he was only recommended out-patient treatment and Pretrial Services and the Government believed that he needed an inpatient placement due to concerns stemming from the nature of the criminal charges. He was unable to obtain a recommendation for inpatient placement because of the fact he had been sober for roughly a year leading up to his arrest.

- ¶ 7. Defendant believes that due consideration of these factors supports Defendant's recommendation.

Dated: 3/1/2023

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